

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT DIABETES CARE, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 05-590-GMS
)	
DEXCOM, INC.,)	
)	
Defendant.)	

MOTION TO DISMISS THE COMPLAINT OF ABBOTT DIABETES CARE, INC.

Defendant ("DexCom") hereby respectfully moves, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the complaint in the above action. The grounds for this motion are set forth in DexCom's accompanying opening brief, request for judicial notice, and declaration of Andrew K. Balo.

ASHBY & GEDDES

/s/ Steven J. Balick

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Dated: August 31, 2005
160963.1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT DIABETES CARE, INC.,

Plaintiff,

v.

DEXCOM, INC.,

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C.A. No. 05-590-GMS

ORDER

This _____ day of _____, 2005, defendant (“DexCom”) having moved to dismiss the complaint in the above action pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and the Court, after considering the positions of the parties, having concluded that good grounds exist for the requested relief; now therefore,

IT IS HEREBY ORDERED that DexCom’s motion is granted and that the complaint is dismissed.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 2005, the attached **MOTION TO DISMISS THE COMPLAINT OF ABBOTT DIABETES CARE, INC.** was served upon the below-named counsel of record at the address and in the manner indicated:

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HAND DELIVERY

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VIA FEDERAL EXPRESS

/s/ Steven J. Balick

Steven J. Balick